

August 7, 2009

Mr. Ricardo Morales  
Project Engineer  
Department of Transportation, City of San Jose  
1404 Mabury Road  
San Jose, CA. 95133

Re: Bid Protest, San Jose Various Streets Resurfacing and Rehabilitation Project

Mr. Ricardo Morales, Project Engineer

Granite Rock Company d.b.a. Pavex Construction Division ("Pavex") protests the award of the above referenced Project to MCK Services, Inc. ("MCK"). Pavex is the lowest responsive bidder, and the project should be awarded to Pavex.

Bids were received for this project on July 30, 2009. MCK's total base bid was \$8,077,777.00. Pavex's total base bid was \$8,199,893.50, just 1 percent (1%) higher. However, MCK's bid was not responsive because MCK failed to complete, or complete accurately, two bid forms required by the Contract Documents and Federal Regulations (this is a Federal Grant Project). The Contract Documents contained two "Bidder's List of Subcontractors (DBE and NON-DBE)" forms. The first, titled "PART I," required bidders to list all subcontractors, both DBE and Non-DBE, the bidder intends to use on the Project. No DBE firms were listed by MCK on its PART I form. Pavex has reviewed MCK's additional Underutilized Disadvantaged Business Enterprise (UDBE) information submitted after bid opening and that documentation lists on form 15-G1 the intended use of STI Trucking to meet the UDBE goal. STI Trucking a DBE (UDBE) subcontractor that was not listed on the PART I form. It appears either that MCK had zero DBE participation at the time bids were submitted, or that the information on its PART I form conflicts with the information in its UDBE submittals. Additionally after a review of UDBE documents it appears MCK's PART II document required on Bid Day (see next paragraph) was not submitted with the required UDBE information four (4) days later.



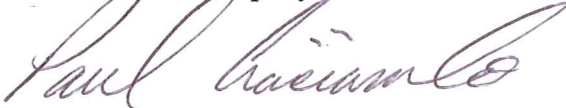
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The Contract Documents require bidders to submit a "PART II" form, on which bidders were required to list "all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project." MCK left this form in its bid submittal completely blank. Both Pavex and the third bidder listed more than twenty (20) subcontractors on their PART II forms, demonstrating the large number of subcontractors quoting this Project. Either MCK only received bids from the subcontractors listed on its PART I form (which is highly improbable given the size of the project and the number of quoting subcontractors), or it failed to list the other bids received on the PART II form.

Both the PART I and PART II forms are mandatory (each says the "bidder *shall* list all subcontractors...."). MCK's failure to complete the PART I form accurately, and failure to complete the PART II form at all, render its bid non-responsive. Pavex's bid is fully responsive, and this project should be awarded to Pavex as the lowest responsive, responsible bidder.

Respectfully,

Granite Rock Company d.b.a. Pavex Construction Division



Paul L. Cianciarulo  
Chief Estimator